



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

Case #: FOF - 161045

██████████ Respondent

Pursuant to a petition filed September 26, 2013, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on November 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

NOTE: The Office of Inspector General (OIG) sent the Respondent an Administrative Disqualification Hearing Notice at an address in Milwaukee. On the first hearing date, November 18, 2014, the Respondent was reached by phone. The Respondent indicated that she was actually living in Tennessee and wanted to waive her right to a hearing. OIG sent a waiver form to the Respondent at the Tennessee address she provided and the hearing was rescheduled to December 29, 2014.

The Division of Hearings and Appeals sent notice of the new hearing date to the Respondent to the Tennessee address that the Respondent provided on November 18th. That notice was returned. ALJ Ishii called the Respondent on November 21, 2014 and the Respondent provided an alternate mailing address on Roosevelt Parkway. A new notice was sent to her at that address. No returned mail was received. OIG was advised of this new address.

The Respondent did not return the signed waiver. On December 29, 2014, ALJ Ishii called the Respondent for the hearing. At that time, the Respondent indicated that she did not want to participate in the hearing. The Respondent was asked if she was sure about her decision, since OIG was seeking to disqualify her from the food stamp program for 10 years and she indicated that she was sure she did not want to participate in the hearing. Consequently, the hearing was conducted in the Respondent's absence.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Representative: Megan Ryan, PARIS Agent

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

[REDACTED]

ADMINISTRATIVE LAW JUDGE:
Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. On February 28, 2013, the Respondent (CARES # [REDACTED]), completed an on-line ACCESS application for FoodShare benefits. In that application, the Respondent indicated that she was not homeless and lived in Milwaukee, Wisconsin. The Respondent electronically signed the application indicating the information in the application was complete and correct and that she understood the penalties for breaking the rules. (Exhibit 3)
2. The Respondent received FoodShare benefits in Wisconsin between March 1, 2013 and May 31, 2013. (Exhibit 4)
3. The Respondent had an open food stamp case in Tennessee, between October 1, 2012 and September 30, 2013; she received payments of \$44.00 per month for March, April and May 2013. (See Exhibits, 4, 5 and 7)
4. On October 15, 2014, the Office of Inspector General (OIG) prepared an Administrative Disqualification Hearing Notice, alleging that the Respondent provided false information in order to receive FoodShare benefits between March 1, 2013 and May 31, 2013.

DISCUSSION

What is an Intentional Program Violation?

7 C.F.R. §273.16(c) states that Intentional Program Violations “shall consist of having intentionally: 1) Made a false or misleading statement or misrepresented facts; or 2) Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization card or any other reusable documents used as part of an automated delivery system (access device).”

The Department’s written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or

4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

FoodShare Wisconsin Handbook, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

What is OIG's burden of Proof?

In order for the agency to establish that a FoodShare recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence"(a.k.a. "more likely than not") used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that "it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable." 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there might be reasonable doubt that the elements have been shown.

The Merits of OIG's Case

In the case at hand, the Office of the Inspector General (OIG) asserts that the Respondent violated the rules of the FoodShare Program by lying about her residence between March 1, 2013 and May 31, 2013, in order to receive duplicate food stamp benefits.

“A household shall live in the State in which it files an application for participation” in the food stamp program. 7 CFR §273.3(a); *See also FoodShare Wisconsin Handbook §3.2.1, “Applicants for FoodShare benefits must reside in, or be temporarily absent from Wisconsin.”*

Per 7 C.F.R. §273.16(b)(5), “an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.” *See also FoodShare Wisconsin Handbook, § 3.14.12*

The Respondent was a food stamp recipient in Tennessee from October 1, 2012 to September 30, 2013. She also applied for FoodShare benefits in Wisconsin in February 2013 and received benefits between March 1, 2013 and May 31, 2013.

7 CFR §273.12(a)(5) allows states to implement simplified reporting requirements. Tennessee is one such state and, “The only households that would not be assigned to SR [simplified reporting] are cases that are certified for twelve months because the only earned income is annualized income from self-employment.” *See the Tennessee Department of Human Services Food Stamp Online Policy Manual found at:*

http://tn.gov/humanserv/adfam/fs_olm/38.9%20Households%20Subject%20to%20Simplified%20Reporting.htm

Tennessee food stamp recipients subject to simplified reporting are required to complete an Interim Report during the six month of the certification period and must report certain changes in income, and for abled bodied adults without dependents, employment hours that decrease below 20 hours per week. *Id.* For the Respondent, this means she needed to complete an Interim Report in April 2013. Given that her Tennessee benefits continued after April 2013, the Respondent must have completed the required Interim Report form. As such, she had an opportunity to report a move to Wisconsin, if there was one, but must not have done so.

This is problematic for the Respondent, because in order to receive food stamp benefits in Tennessee, an individual must reside in Tennessee. *See* Section 1240-1-3.02 of the Tennessee Department of Human Services Food Stamp Online Policy Manual; *See also* 7 CFR §273.3(a), *above*.

In Wisconsin, because the Respondent was over age 60, and reported no earned income, she was required to report any address changes within 10-days of the date that the change was known to her. (See Exhibits 3 and 9; *FoodShare Wisconsin Handbook §6.1.1.1*) If Petitioner was back in Tennessee in April 2013, when she completed the Interim Report form, then she was required to report that change in residence within at least 10 days of the move. There is no indication that she did so. (See Case Comments, Exhibit 8)

Based upon the foregoing, the Respondent either withheld information from Tennessee about a move to Wisconsin, or she lied/withheld information from Wisconsin regarding a Tennessee address and this resulted in the receipt of duplicate benefits.

Intention is a subjective state of mind to be determined upon all the facts, Lecus v. American Mut. Ins. Co. of Boston, 81 Wis.2d 183 (1977), but there is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. There is nothing in the record to rebut the presumption that the Respondent knew it was against

program rules to lie/withhold information about her residence, but did it anyway, in order to receive duplicate FoodShare / food stamp benefits from Wisconsin and Tennessee.

The record establishes, by clear and convincing evidence that the Respondent intentionally violated FoodShare program rules, and that this violation was the first such violation committed by the Respondent. Therefore, OIG correctly seeks to disqualify the Respondent from the food stamp program for ten years.

CONCLUSIONS OF LAW

1. The Respondent violated, and intended to violate, the food stamp / FoodShare program rule specifying that the recipient live in the state from which she receives benefits.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is ORDERED

That the petitioner's determination is sustained, and that OIG may make a finding that the Respondent committed a first IPV of the FoodShare program and disqualify the Respondent from the program for ten years effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

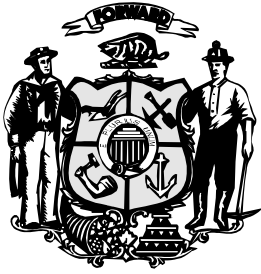
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin,
this 9th day of January, 2015.

\sMayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Megan Ryan - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 9, 2015.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
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